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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,419	08/29/2001	Timothy Bateman	0100/0134	5102

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EXAMINER

MITCHELL, TEENA KAY

ART UNIT PAPER NUMBER

3743

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/940,419

Applicant(s)

BATEMAN ET AL.

Examiner

Teena Mitchell

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,10 and 11 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 06/28/04 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Davidson (4,050,457).

Davidson in a patient ventilation device (10) discloses:

- a flexible, adhesive sheet member (10, 20) adapted to extend across the mouth and nose of a patient (Figs. 3, 4);
- an opening (11, 21) through said member in the region of the mouth;
- and an adhesive surface (23) on the member adapted to seal around the mouth and nose of the patient such that the nose is

Art Unit: 3743

blocked by adhesion of said flexible, adhesive sheet member (10) around the nose and the mouth opens through said opening enabling ventilation via the mouth (inasmuch as the sheet covers the nose and mouth and has an adhesive it is inherent that the nose is blocked by adhesion of the sheet member when placed on the patient).

With respect to claim 3, Davidson discloses wherein the sheet (10) has two laterally-extending cheek pads (Figs. 1, 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- 1. Determining the scope and contents of the prior art.**
- 2. Ascertaining the differences between the prior art and the claims at issue.**
- 3. Resolving the level of ordinary skill in the pertinent art.**
- 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.**

Claims 5, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson (4,050,457) in view of Karlis (5,476,092).

Art Unit: 3743

The difference between Davidson and claim 5 is the tube (22) extends within the patient's mouth and the other end of said tube projects externally.

Karlis in a mask teaches a tube (2) wherein one end extends within the patient's mouth (6) and the other end of said tube projects externally (2) providing a means to keep the teeth of the patient apart and hence the mouth open and may direct air onto the soft palate of the mouth of the patient, also reducing the risk of obstruction of the fluid passage by the tongue of the patient (Col. 2, lines 38-45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the opening of Davidson to employ any well known tube wherein one end extends within the patient's mouth and the other end projects externally doing so would have provided a means to keep the teeth of the patient apart and hence the mouth open and may direct air onto the soft palate of the mouth of the patient, also reducing the risk of obstruction of the fluid passage by the tongue of the patient including the tube taught by Karlis.

With respect to claim 10, note rejections of claims 1 and 5 above.

With respect to claim 11, Karlis teaches a removable vent tube inserted through said fitting (2, 6).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson in view of Smith (5,666,950).

The difference between Davidson/Brumfield and claim 6 is the adhesive includes a hydrocolloid.

Art Unit: 3743

Smith in a stoma filter device teaches a hydrocolloid adhesive providing a composition, which absorbs significant quantities of moisture reducing skin maceration (Col. 5, lines 12-18).

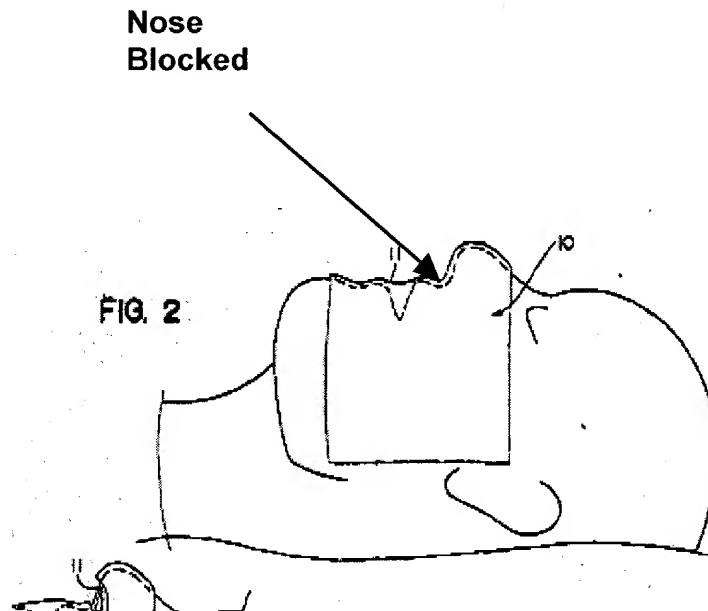
It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the adhesive of Davidson/Brumfield to employ any well known hydrocolloid doing so would have provided an adhesive which absorbs significant quantities of moisture reducing skin maceration including the hydrocolloid taught by Smith.

Response to Arguments

Applicant's arguments filed 6/28/04 have been fully considered but they are not persuasive. With respect to the arguments of the sheet of Davidson not being an adhesive sheet, inasmuch as the sheet of Davidson has an adhesive the is therefore an adhesive sheet (an adhesive sheet does not mean that the sheet has a surface entirely comprised of an adhesive, it merely means that the sheet has a part that has an adhesive someplace on the sheet). Applicant has not claimed any structural limitations, which are not disclosed by Davidson. Applicant is directed to the illustration of Fig. 2 below. Davidson does disclose that the nose is blocked by adhesion of the sheet. Inasmuch as the adhesive on the mask of Davidson secures the mask to the victim's head it inherently blocks the nose. Applicant has not claimed that the adhesive is located on the entire sheet material and that as the adhesive is secured at the area between the mouth and nose of the user and it is the adhesive at this area that blocks the nose. Applicant argues that the person providing CPR would pinch the user's

Art Unit: 3743

nose to close the patient's nose, which is true, however applicant has not claimed that the nose is closed at the area above the nose and upper lip by adhesive which is on the entire sheet member, applicant only claims the nose is blocked by adhesion of the sheet member around the nose, not that there is an adhesive around the nose that closes the nose. Applicant's arguments are not commensurate with the scope of the claims.



Allowable Subject Matter


Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3743

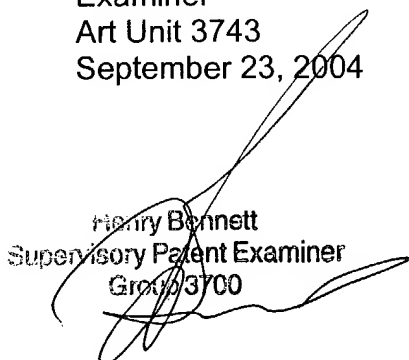
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (703) 308-4016. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell
Examiner
Art Unit 3743
September 23, 2004



Henry Bennett
Supervisory Patent Examiner
Group 3700